

CR 09 00670 JW

HRL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA P 3:30

SEALED BY ORDER
OF THE COURT

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S. J.

THE UNITED STATES OF AMERICA

VS.

DAVID RUSSELL FOLEY and MICHAEL DADDONA

INDICTMENT

COUNT ONE:

Title 18, United States Code, §§371 and 2 -
Conspiracy to Commit Mail Fraud and Wire Fraud;

COUNTS TWO-ELEVEN:

Title 18, United States Code § 2320(a) - Trafficking in
Counterfeit Goods, Aiding and Abetting;

COUNT TWELVE:

Title 18 United States Code §§2314 and 2 -
Trafficking in Stolen Goods, Aiding and Abetting;

COUNT THIRTEEN:

Title 18 United States Code §1832(a)(1) - Theft of
Trade Secrets;

COUNTS FOURTEEN - EIGHTEEN:

Title 18 United States Code §§1341 and 2 - Mail
Fraud and Aiding and Abetting;

COUNTS NINETEEN-TWENTY THREE:

Title 18 United States Code §§1343 and 2
Wire Fraud and Aiding and Abetting;

COUNT TWENTY FOUR:

Title 18 United States Code §§1956(h) and 2 -
Conspiracy to Commit Money Laundering and
Aiding and Abetting;

COUNTS TWENTY FIVE - TWENTY NINE:

Title 18 United States Code §1956(a)(1)(B)(i)-
Money Laundering

COUNTS THIRTY - THIRTY FOUR:

Title 18 United States Code §1957 - Engaging
in Money Laundering Transactions in
Property Derived From Specified Unlawful
Activity

//
//
//
//
//
//
//

DOCUMENT NO.	CSA's INITIALS
11	
DISTRICT COURT CRIMINAL CASE PROCESSING	

COUNT THIRTY FIVE

Title 18 United States Code §1344(2) - Bank
Fraud

A true bill.

Ramona Wilk

Foreperson

Filed in open court this 1st day of July

A.D. 2009

Patricia V. Drumbel
United States Magistrate Judge

Bail. \$ No Bail

Under Seal

Patricia V. Drumbel
July 1, 2009

JOSEPH P. RUSSONIELLO (CASBN 44332)
United States Attorney

FILED

2009 JUL -1 P 3:30

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

**SEALED BY ORDER
OF THE COURT**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JW

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID RUSSELL FOLEY, and

MICHAEL DADDONA,

Defendants.

CR - 09 00670 HRL

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy to Commit Mail Fraud and Wire
Fraud; 18 U.S.C. § 2320(a) - Trafficking in
Counterfeit Goods;
18 U.S.C. § 2314 - Trafficking in Stolen
Goods; 18 U.S.C. § 1832 - Theft of Trade
Secrets; 18 U.S.C. §§ 1341 - Mail Fraud;
18 U.S.C. § 1343 - Wire Fraud; 18 U.S.C. §
1956(h) – Conspiracy to Commit Money
Laundering; 18 U.S.C. § 1956(a)(1)(B)(i)-
Money Laundering To Conceal Illegal
Activity; 18 U.S.C. § 1957(a) - Engaging in
Monetary Transactions in Property Derived
From Specified Unlawful Activity; 18
U.S.C. 1344(2) - Bank Fraud; 18 U.S.C.
§ 2--Aiding and Abetting

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

At all times relevant to this Indictment:

1. GLOBAL VR was a corporation located in San Jose, California, engaged in the

INDICTMENT

1 arcade systems as authentic GLOBAL VR product on eBay, an online auction market website.
2 The game packs were sold at significantly lower prices than the retail prices charged by
3 GLOBAL VR.

4 11. Customers who purchased the game packs from AUTOMATED SERVICES and
5 DADDONA paid for the games packs by mailing checks to Milford, Connecticut or via wire
6 transfer using PayPal, an online money transfer service. After payments were received from the
7 customers, AUTOMATED SERVICES and DADDONA mailed the game packs to the customers
8 nationwide.

9 12. On September 23, 2006, FOLEY was terminated from his employment at
10 GLOBAL VR after an internal investigation revealed that FOLEY continued to sell
11 ULTRACADE game packs for his own benefit, even after FOLEY had agreed to and had been
12 compensated for the transfer of intellectual property from FOLEY to GLOBAL VR.

13 13. On October 3, 2006, FOLEY applied for and ultimately secured a loan in the
14 amount of \$2,624,475 to purchase a house in Los Gatos, California. FOLEY represented in the
15 application and submitted documents stating that he was then still employed by and received
16 regular income from GLOBAL VR.

17
18 COUNT ONE: (18 U.S.C. §§ 371—Conspiracy to Commit Mail Fraud and Wire Fraud)

19 14. The factual allegations in paragraphs 1 through 13 are re-alleged and incorporated
20 herein as if set forth in full.

21 15. Beginning on a date unknown, but by no later than in or about June 2006, and
22 continuing to on or about February 2008, in the Northern District of California and elsewhere,
23 the defendants

24 DAVID RUSSELL FOLEY, and
25 MICHAEL DADDONA

26 and others known and unknown to the Grand Jury, knowingly and intentionally combined,
27 conspired, and agreed to commit mail fraud and commit wire fraud in violation of Title 18,
28 United States Code, Sections 1341 and 1343.

MANNER AND MEANS OF THE CONSPIRACY

16. The gist of the conspiracy and scheme and artifice to defraud was that FOLEY, after reaping the benefits from the sale of his company, ULTRACADE, which ultimately resulted in the transfer of all of the assets and intellectual property belonging to ULTRACADE and FOLEY to GLOBAL VR, secretly manufactured and sold game packs containing video arcade games with counterfeit markings belonging to GLOBAL VR for his own financial benefit.

17. As part of the conspiracy and scheme and artifice to defraud, FOLEY retained and stole the intellectual property and trade secrets belonging to GLOBAL VR, and used materials purchased by GLOBAL VR, and other equipment belonging to GLOBAL VR, to manufacture and produce video arcade game packs and complete video arcade game systems with counterfeit markings.

18. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY manufactured the game packs by using and including the proprietary code that enabled the games belonging to and licensed by GLOBAL VR, as well as games not licensed by GLOBAL VR, but owned by third party gaming software developers, such as Namco, Nintendo and Taito, to be played on the video arcade game platform belonging to GLOBAL VR.

19. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY then sold the games packs he manufactured to AUTOMATED SERVICES, a company owned and operated by DADDONA in Milford, Connecticut.

20. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY also sold a key fob burner to DADDONA, so that DADDONA could manufacture games packs loaded with the stolen intellectual property and trade secrets belonging to GLOBAL VR and others.

21. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY directed DADDONA to pay for the counterfeit game packs by sending FOLEY checks made out to FOLEY, as well as sending checks and wire transfers to companies and bank accounts controlled and operated by FOLEY, but held in the names of other persons and entities.

22. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY

1 business of the development and sale of coin-operated arcade video games based on home
2 gaming technology. GLOBAL VR's core business was centered upon redesigning video games
3 licensed and developed by third parties, specifically for the coin-operated video arcade gaming
4 market.

5 2. Defendant DAVID RUSSELL FOLEY ("FOLEY") resided in Los Gatos,
6 California, and previously owned and operated an arcade video game company called UltraCade
7 Technologies (ULTRACADE) in San Jose, California.

8 3. Defendant MICHAEL DADDONA ("DADDONA") owned and operated a coin-
9 operated vending and arcade game business called AUTOMATED SERVICES in Milford,
10 Connecticut.

11 4. GLOBAL VR and ULTRACADE entered into negotiations to evaluate an
12 acquisition of the assets of both ULTRACADE and DAVID FOLEY through an Asset Purchase
13 Transaction. On December 8, 2005, ULTRACADE and GLOBAL VR signed a Memorandum of
14 Understanding memorializing the parties' intentions. On June 2, 2006, all of the assets of
15 ULTRACADE and the assets FOLEY owned in ULTRACADE were conveyed to GLOBAL VR
16 through a third party. As part of the purchase, GLOBAL VR obtained all of ULTRACADE's
17 and FOLEY's ownership interests in the subject technology and assets. FOLEY, who had been a
18 part of the development of some of ULTRACADE's products, also signed over all intellectual
19 property titled in his own name. All ULTRACADE licensing rights were also transferred to
20 GLOBAL VR.

21 5. FOLEY was obligated under Employment and Confidentiality agreements to
22 maintain the proprietary and confidential information in confidence and to act in GLOBAL VR's
23 best interests.

24 6. One of the products that ULTRACADE sold was an item called a game pack. A
25 game pack was a collection of video games that could be loaded onto a full arcade video game
26 machine. The rights to produce and sell ULTRACADE game packs were also transferred to
27 GLOBAL VR.

28 7. In order to manufacture a game pack, a machine called a "fob burner" was used to

1 transfer the intellectual property belonging to GLOBAL VR onto a "key fob" or portable thumb
2 drive. A fob burner is a computer built using a specific motherboard and containing the
3 proprietary fob-loading software. The software was downloaded to a key fob using an operating
4 system that read and decrypted only Global VR games, and could be inserted into a computer to
5 create individual games packs or full arcade systems. The license to use the key fob loading code
6 was transferred from ULTRACADE and FOLEY to GLOBAL VR through the Asset Purchase
7 Transaction. The operating system acquired by GLOBAL VR that enabled video games to be
8 played on the gaming platform was called the "Joshua" operating system. The game packs
9 themselves contained intellectual property of third parties, as well as game files that contained
10 the GLOBAL VR proprietary code that allowed the games to be transferred onto arcade machines
11 using the Joshua operating system.

12 8. Unbeknownst to GLOBAL VR, just prior to the purchase of ULTRACADE,
13 FOLEY manufactured game packs at his residence using a fob burner stolen from
14 ULTRACADE, along with approximately 1,500 blank key fobs also stolen from ULTRACADE,
15 and an additional 200 blank key fobs that FOLEY ordered from Ma Laboratories and charged to
16 GLOBAL VR. FOLEY used the licensed operating system on the key fob burner to
17 manufacture game packs. These game packs were sold to AUTOMATED SERVICES in
18 Milford, Connecticut, a company owned and operated by MICHAEL DADDONA. DADDONA
19 paid FOLEY for the game packs and the proceeds were not recorded in GLOBAL VR's
20 accounting records.

21 9. AUTOMATED SERVICES and DADDONA paid FOLEY for the game packs
22 using checks made payable to FOLEY. At FOLEY's direction, DADDONA also paid FOLEY
23 for the game packs by sending checks and wire transfers to a company called TOAPLAN, which
24 is an entity established and controlled by FOLEY. At FOLEY's direction, DADDONA also paid
25 FOLEY for the game packs by sending checks and wire transfers to a bank account in the name
26 of B.B. After deposits were made into the B.B. bank account, funds were immediately
27 transferred to Bank of America Account No. XXXXXX5625, belonging to FOLEY.

28 10. AUTOMATED SERVICES and DADDONA advertised the game packs and

1 then transferred the monies paid by DADDONA for the counterfeit game pack to a bank account
2 in his own name.

3 23. As a further part of the conspiracy and scheme and artifice to defraud, FOLEY
4 caused DADDONA to advertise and sell the counterfeit game packs as authentic GLOBAL VR
5 product on eBay, at significantly lower prices than those charged by GLOBAL VR.

6 24. As a further part of the conspiracy and scheme and artifice to defraud, once
7 consumers placed orders for what was represented to be genuine GLOBAL VR products, the
8 consumers would and did send payment for the game packs to DADDONA by mail or by wire
9 transfers of funds through PayPal.

10 25. As a further part of the conspiracy and scheme and artifice to defraud, and after
11 DADDONA received payment for what was represented to consumers to be new and genuine
12 GLOBAL VR product, FOLEY caused DADDONA to mail the counterfeit product to the buyers.

13 26. As a further part of the scheme and artifice to defraud, and in an attempt to
14 conceal FOLEY's illicit activity from his employer, GLOBAL VR, FOLEY instructed,
15 encouraged, and otherwise caused DADDONA to lie to representatives of GLOBAL VR when
16 DADDONA was asked why he had not purchased the regular supply of game packs from
17 GLOBAL VR.

18 OVERT ACTS COMMITTED IN FURTHERANCE OF THE CONSPIRACY

19 27. In furtherance of the conspiracy and to affect the objects thereof, at least one of
20 the co-conspirators committed and caused to be committed in the Northern District of California
21 and elsewhere, at least one of the following overt acts:

22 a. The overt acts listed in counts 14 through 23 of this indictment, with each
23 count being adopted and re-alleged as a separate overt act.

24 All in violation of 18 U.S.C. § 371.

25
26 COUNTS TWO THROUGH ELEVEN: (18 U.S.C. §§ 2320(a) and 2 - Trafficking In
27 Counterfeit Goods; Aiding and Abetting)

28 28. The factual allegations in paragraphs 1 through 13 are re-alleged and incorporated

herein as if set forth in full.

29. On or about the dates set forth in the separate counts below, in the Northern District of California, and elsewhere, the defendants

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA

did intentionally traffic in goods and knowingly use counterfeit marks on and in connection with those goods, by knowingly transporting, transferring, and disposing of for value, the following packages of the below-listed counterfeit game packs and arcade systems:

Count	Date	Item
2	6/29/06	Casino Pack - Ultracade (UC)
3	8/26/06	Taito Arcade Classics Pack for Arcade Legends (AL)
4	9/22/06	Trackball Classics Pack for UC
5	10/9/06	Midway Arcade Treasures for AL
6	3/7/07	Lost Treasures for AL
7	3/18/07	Sports Pack for AL
8	4/6/07	Space Invaders for UC
9	9/9/07	Dragon's Lair Anniversary Pack for UC
10	12/11/07	Mega Pack for AL
11	1/28/08	Custom F pack for AL

All in violation of 18 U.S.C. §§ 2320(a) and 2.

COUNT TWELVE: (18 U.S.C. §§ 2314 and 2 -Trafficking in Stolen Goods; Aiding and Abetting)

30. The factual allegations in paragraphs 1 through 13 are hereby realleged and incorporated by reference as if set forth in full herein.

31. Beginning on or about June 2006, and ending on or about January 2008, the defendant

DAVID RUSSELL FOLEY

did traffic in stolen goods by knowingly transporting, transmitting, and transferring in interstate commerce, that is, from California to Connecticut, goods of the value of \$5,000 or more, to wit: a

1 key fob burner containing the intellectual property and proprietary code belonging to and licensed
2 by GLOBAL VR, knowing the same to have been stolen, converted and taken by fraud.

3 All in violation of 18 U.S.C. §§ 2314 and 2.

4
5 COUNT THIRTEEN: (18 U.S.C. § 1832(a)(1) - Theft of Trade Secrets)

6 32. The factual allegations in paragraphs 1 through 13 are hereby realleged and
7 incorporated by reference as if set forth in full herein. set forth in full herein.

8 33. Beginning on or about June 2006, and ending on or about January 2008, in the
9 Northern District of California, the defendant

10 DAVID RUSSELL FOLEY

11 with intent to convert a trade secret, that is related to and included in products that are produced
12 for and placed in interstate commerce, specifically the delivery mechanism enabling the games
13 contained in the GLOBAL VR game packs to be played on the GLOBAL VR propriety multi-
14 game gaming systems, intending that the theft would economically benefit someone other than
15 GLOBAL VR, and intending and knowing that the offense would injure GLOBAL VR, did steal
16 and without authorization, appropriate and take such information.
17

18 All in violation of 18 U.S.C. § 1832(a)(1).

19
20 COUNT FOURTEEN THROUGH EIGHTEEN: (18 U.S.C. §1341 and 2- Mail Fraud; Aiding
and Abetting)

21 34. The factual allegations in paragraphs 1 through 13 are hereby realleged and
22 incorporated by reference as if set forth in full herein.

23 35. On or about the dates listed below, in the Northern District of California and
24 elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud and
25 attempting to do so, the defendants

26 DAVID RUSSELL FOLEY, and
27 MICHAEL DADDONA

28 having devised the above-described scheme and artifice to defraud and obtain money by means

of material false and fraudulent pretenses, representations, and promises, caused to be deposited matters and things in the Northern District of California, that is, game packs and video arcade units, to be sent and delivered by a private and commercial interstate carrier, that is, United Parcel Service, as set forth in the separate counts below:

Count	Date	Name	Address	Amount
14	6/29/06	Sam Martinovich	Danville, California	\$ 775.00
15	10/12/06	Timothy Tarasow	Danville, California	\$ 970.00
16	6/01/07	John Binder	San Jose, California	\$ 125.00
17	9/9/07	Aaron Eeg	Sunnyvale, California	\$ 550.00
18	12/10/07	Ronald Cheung	Foster City, California	\$ 550.00

All in violation of 18 U.S.C. §§ 1341 and 2.

COUNTS NINETEEN THROUGH TWENTY-THREE: (18 U.S.C. §§ 1343 and 2 - Wire Fraud; Aiding and Abetting)

36. The factual allegations in paragraphs 1 through 13 are hereby realleged and incorporated by reference as if set forth in full herein.

37. On or about the dates listed below, in the Northern District of California and elsewhere, the defendants,

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA

having devised the above-described scheme and artifice to defraud and obtain money by means of material false & fraudulent pretenses, representations, and promises, knowingly transmitted and caused to be transmitted, in interstate and foreign commerce, by means of wire communications, certain writings, signs, and signals, that is, transmissions from the Northern District of California to Connecticut, as set forth in the counts below:

Count	Invoice Date	Product(s)	Payment Amount
19	6/29/06	Casino Pack, Galaxian Pack, Space Invaders Deluxe	\$ 697.50
20	10/12/06	Midway Arcade Treasures, Arcade Pack 4	\$1,030.00

21	2/09/07	King Pack for AL	\$ 260.00
22	9/09/07	Dragon's Lair Anniversary Pack for UC, Taito Arcade Classics Pack for UC	\$ 592.25
23	12/05/07	Mega Pack, Space Invaders Pack	\$ 180.25

All in violation of 18 U.S.C. §§ 1343 and 2.

COUNT TWENTY-FOUR: (18 U.S.C. §§ 1956(h)—Conspiracy to Commit Money Laundering)

38. The factual allegations in paragraphs 1 through 13 are re-alleged and incorporated herein as if set forth in full.

39. Beginning on a date unknown, but by no later than in or about June 2006, and continuing to on or about February 2008, in the Northern District of California and elsewhere, the defendants

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA,

and others known and unknown to the Grand Jury, knowingly and intentionally combined, conspired, and agreed to engage and attempted to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, that is, by depositing a monetary instrument, such property having been derived from a specified unlawful activity, namely, mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, and thus in violation of Title 18, United States Code, Section 1957.

40. The manner and means of the conspiracy in paragraphs 16 through 26 are re-alleged and incorporated herein as if set forth in full.

All in violation of Title 18, United States Code, Sections 1956(h).

//

//

//

//

COUNTS TWENTY-FIVE THROUGH TWENTY-NINE: (18 U.S.C. 1956(a)(1)(B)(i) - Money Laundering To Conceal Illegal Activity)

41. The factual allegations in paragraphs 1 through 13 are hereby realleged and incorporated by reference as if set forth in full herein.

42. On or about the dates set forth in the separate counts below, in the Northern District of California, and elsewhere, the defendants

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA

knowing that the property involved in the financial transaction represented proceeds of some form of unlawful activity, did knowingly and willfully conduct and attempt to conduct the financial transactions set forth below, affecting interstate and foreign commerce, all of which involved the proceeds of criminal theft of a trade secret, trafficking in counterfeit goods and stolen goods, and wire fraud and mail fraud, knowing that each transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of those specified unlawful activities, to wit: the defendants established and used bank accounts in the names of nominee business entities including Toaplan Ltd. to conceal the proceeds of the unlawful activity:

Count	Date	Type	Destination Account	Amount
25	2/7/07	Wire	Toaplan	\$ 6,000
26	8/1/07	Wire	Toaplan	\$ 3,500
27	12/5/06	Wire	David Foley	\$ 9,400
28	12/11/06	Wire	David Foley	\$ 9,500
29	12/22/06	Wire	David Foley	\$ 5,000

All in violation of Title 18, U.S.C. § 1956(a)(1)(B)(i).

//

//

//

COUNTS THIRTY THROUGH THIRTY-FOUR: 18 U.S.C. § 1957(a) - Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity

43. The factual allegations in paragraphs 1 through 13 are hereby realleged and incorporated by reference as if set forth in full herein.

44. On or about the dates set forth in the separate counts below, in the Northern District of California, and elsewhere, the defendant

DAVID RUSSELL FOLEY

did knowingly engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity that took place in the United States, all of which involved the proceeds of criminal theft of a trade secret, trafficking in counterfeit goods and stolen goods, and wire fraud and mail fraud, to wit: the defendant used illegal funds to put a down payment on his house and to pay monthly mortgage and two down payments, all over \$10,000:

Count	Date	Type	Amount
30	6/29/06	Down payment	\$95,668.93
31	6/29/06	Down payment	\$35,463.47
32	5/16/07	Mortgage payment	\$16,874.85
33	8/21/07	Mortgage payment	\$16,874.85
34	1/22/08	Mortgage payment	\$18,067.87

All in violation of Title 18, U.S.C. § 1957(a).

COUNT THIRTY-FIVE: (18 U.S.C. § 1344(2) - Bank Fraud)

45. The factual allegations in paragraphs 1 through 13 are re-alleged and incorporated herein as if set forth in full.

46. On October 3, 2006, in the Northern District of California, the defendant,

DAVID RUSSELL FOLEY,

knowingly executed a scheme or artifice to obtain any of the moneys, funds, credits, assets,

securities, or other property owned by, or under the custody or control of, a financial institution, by means of material false or fraudulent pretenses, representations, and promises, to wit: submission of papers stating GLOBAL VR as an employer and a monthly salary, when in fact as the defendant well knew, he was no longer employed by GLOBAL VR, nor were any monies to be paid to FOLEY by GLOBAL VR.

All in violation of 18 U.S.C. § 1344(2).

FIRST FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

47. The factual allegations contained in paragraphs 1 through 13, paragraphs 16 through 26, and Counts 1, 14 - 23 and 35 of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

48. Upon conviction of any of the offenses alleged in Counts 1, 14 - 23 and 35 of this Indictment, the defendants

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all property constituting, and derived from, proceeds the defendants obtained, directly or indirectly, as the result of said violations, including but not limited to the following property:

- a. a sum of money equal to the total amount of proceeds defendants derived from the commission of said offenses.

49. If, as a result of any act or omission of the defendants, any of said property

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or

e. has been commingled with other property that cannot be divided without difficulty,

any and all interest the defendants have in any other property, up to the value of the property described in paragraph 48 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

SECOND FORFEITURE ALLEGATION: (18 U.S.C. § 982(a)(1))

50. The factual allegations contained in paragraphs 1 through 13, paragraphs 16 through 26, and Counts 24 -34 of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982(a)(1).

51. Upon conviction of any of the offenses alleged in Counts 24 -34 of this Indictment, the defendants

DAVID RUSSELL FOLEY, and
MICHAEL DADDONA

shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(1), all right, title, and interest in property, real and personal, involved in said violations, or any property traceable to such property, including but not limited to the following:

- a. all commissions, fees, and other property constituting proceeds of said offenses;
- b. all property used in any matter to commit or facilitate the commission of said offenses;
- c. a sum of money equal to the total amount of money involved in the commission of said offenses.

52. If, as a result of any act or omission of the defendant, any of said property

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property that cannot be divided without difficulty,

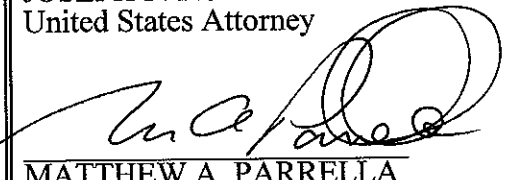
any and all interest the defendant has in any other property, up to the value of the property described in paragraph 31 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

DATED: 7/1/09

A TRUE BILL.


FOREPERSON

JOSEPH P. RUSSONIELLO
United States Attorney


MATTHEW A. PARRELLA
Chief, San Jose Branch Office

(Approved as to form: 
AUSA RICHARD CHENG

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

COUNTS 1 THROUGH 30 - SEE ATTACHMENTS

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: SEE ATTACHMENTS

**SEALED BY ORDER
OF THE COURT**

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

2009 JUL -1 P 3:30

DEFENDANT - U.S.
 RICHARD W. WIEKING
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S.J.

DAVID RUSSELL FOLEY

DISTRICT COURT NUMBER

UNDER SEAL

CR-09 00670**JW****DEFENDANT****PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

☐ person is awaiting trial in another Federal or State Court,
 give name of court

☐ this person/proceeding is transferred from another district
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on motion
 of:
SHOW
DOCKET NO.
☐ U.S. ATTORNEY ☐ DEFENSE

☐ this prosecution relates to a
 pending case involving this same
 defendant
MAGISTRATE
CASE NO.
☐ prior proceedings or appearance(s)
 before U.S. Magistrate regarding this
 defendant were recorded under

 Name and Office of Person
 Furnishing Information on this form JOSPEH P. RUSSONIELLO
☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.
 Attorney (if assigned) Richard Cheng
IS NOT IN CUSTODY
 Has not been arrested, pending outcome this proceeding.
 1) ☒ If not detained give date any prior
 summons was served on above charges
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes
 been filed? ☐ No

 If "Yes"
 give date
 filed
DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT
Bail Amount: No Bail

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

 * Where defendant previously apprehended on complaint, no new summons or
 warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

11

PENALTY SHEET

United States v. David Russell Foley and Michael Daddona

Count 1: 18 U.S.C. §§ 371 and 2 - Conspiracy to Commit Mail Fraud and Wire Fraud (Foley and Daddona)

Maximum Penalties: 5 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the gross gain or loss), and \$100 mandatory special assessment

Counts 2-11: 18 U.S.C. §§ 2320(a), and 2–Trafficking in Counterfeit Goods; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine, and a \$100 mandatory special assessment.

Count 12: 18 U.S.C. §2314 and 2–Trafficking in Stolen Goods; Aiding and Abetting (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine, and a \$100 mandatory special assessment.

Count 13: 18 U.S.C. §§ 1832(a)(1)–Theft of Trade Secrets (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$5,000,000 fine, and a \$100 mandatory special assessment

Count 14-18: 18 U.S.C. §§ 1341 and 2–Mail Fraud; Aiding and Abetting (Foley and Daddona)
Elements:

Maximum Penalties: 20 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the gross gain or loss), and a \$100 mandatory special assessment.

Count 19-23: 18 U.S.C. §§ 1343 and 2—Wire Fraud; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 20 years imprisonment, 3 years supervised release; \$250,000 fine (or twice the gross gain or loss), and a \$100 mandatory special assessment

Count 24: 18 U.S.C. §§ 1956(h) and 2—Conspiracy to Commit Money Laundering; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment

Count 25-29: 18 U.S.C. §§ 1956(a)(1)(B)(i)—Money Laundering (Concealment); Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 20 years imprisonment, 3 years supervised release, \$500,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment

Counts 30-34: 18 U.S.C. §§ 1957—Engaging In Money Laundering Transactions In Property Derived From Specified Unlawful Activity (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment.

Count 35: 18 U.S.C. §§ 1344(2)—Bank Fraud (Foley Only)

Maximum Penalties: 30 years imprisonment, 3 years supervised release, \$1,000,000 fine, and a \$100 mandatory special assessment.

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

COUNTS 1 THROUGH 30 - SEE ATTACHMENTS

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY: SEE ATTACHMENTS

 SEALED BY ORDER
 OF THE COURT

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

2009 JUL -1 P 3:30

DEFENDANT - U.S.

Michael Daddona

 RICHARD W. WIEKING
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CALIF.

DISTRICT COURT NUMBER

UNDER SEAL

 CR-09 00670
 DEFENDANT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

☐ person is awaiting trial in another Federal or State Court,
 give name of court

☐ this person/proceeding is transferred from another district
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on motion
 of:

☐ U.S. ATTORNEY ☐ DEFENSE
SHOW
DOCKET NO.
☐ this prosecution relates to a
 pending case involving this same
 defendant
MAGISTRATE
CASE NO.
☐ prior proceedings or appearance(s)
 before U.S. Magistrate regarding this
 defendant were recorded under

 Name and Office of Person
 Furnishing Information on this form JOSEPH P. RUSSONIELLO

☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.
 Attorney (if assigned) Richard Cheng

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

 1) ☒ If not detained give date any prior
 summons was served on above charges
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes
 been filed? ☐ No

 If "Yes"
 give date
 filed
DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

Bail Amount: No Bail

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

 * Where defendant previously apprehended on complaint, no new summons or
 warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

12

PENALTY SHEET

United States v. David Russell Foley and Michael Daddona

Count 1: 18 U.S.C. §§ 371 and 2 - Conspiracy to Commit Mail Fraud and Wire Fraud (Foley and Daddona)

Maximum Penalties: 5 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the gross gain or loss), and \$100 mandatory special assessment

Counts 2-11: 18 U.S.C. §§ 2320(a), and 2-Trafficking in Counterfeit Goods; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine, and a \$100 mandatory special assessment.

Count 12: 18 U.S.C. §2314 and 2-Trafficking in Stolen Goods; Aiding and Abetting (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine, and a \$100 mandatory special assessment.

Count 13: 18 U.S.C. §§ 1832(a)(1)-Theft of Trade Secrets (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$5,000,000 fine, and a \$100 mandatory special assessment

Count 14-18: 18 U.S.C. §§ 1341 and 2-Mail Fraud; Aiding and Abetting (Foley and Daddona)
Elements:

Maximum Penalties: 20 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the gross gain or loss), and a \$100 mandatory special assessment.

12

Count 19-23: 18 U.S.C. §§ 1343 and 2—Wire Fraud; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 20 years imprisonment, 3 years supervised release; \$250,000 fine (or twice the gross gain or loss), and a \$100 mandatory special assessment

Count 24: 18 U.S.C. §§ 1956(h) and 2—Conspiracy to Commit Money Laundering; Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment

Count 25-29: 18 U.S.C. §§ 1956(a)(1)(B)(i)—Money Laundering (Concealment); Aiding and Abetting (Foley and Daddona)

Maximum Penalties: 20 years imprisonment, 3 years supervised release, \$500,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment

Counts 30-34: 18 U.S.C. §§ 1957—Engaging In Money Laundering Transactions In Property Derived From Specified Unlawful Activity (Foley Only)

Maximum Penalties: 10 years imprisonment, 3 years supervised release, \$250,000 fine (or twice the amount of the criminally derived property involved in the transaction), and a \$100 mandatory special assessment.

Count 35: 18 U.S.C. §§ 1344(2)—Bank Fraud (Foley Only)

Maximum Penalties: 30 years imprisonment, 3 years supervised release, \$1,000,000 fine, and a \$100 mandatory special assessment.